Supreme Court of the United States

OCTOBER TERM 1922

No. ~~219~~ 252

FIRST NATIONAL BANK IN ST. LOUIS
Plaintiff-in-error

vs.

STATE OF MISSOURI, AT THE INFORMATION OF JESSE W. BARRETT, ATTORNEY GENERAL

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI

BRIEF OF AMICI CURIAE

JOHN QUINN
PAUL KIEFFER
ROBERT P. STEWART
Amici Curiae

INDEX

AUTHORITIES CITED

Cases

STATUTES AND TEXTBOOKS CITED

NOTICE OF MOTION FOR LEAVE TO FILE THIS BRIEF.

Notice of the intention of the undersigned and of Messrs. Shearman & Sterling to make an application to this Court for leave to file briefs as *amici curiae* on behalf of certain banks in New York, was duly given in a letter of Messrs. Jones, Hocker, Sullivan & Angert, counsel for the plaintiff in error, to the Attorney General of Missouri on April 19, 1923. Under date of April 20, 1923 the Attorney General replied to Messrs. Jones, Hocker, Sullivan & Angert, counsel for the plaintiff in error, acknowledging the receipt of their letter of April 19, 1923, advising the Attorney General of Missouri that the undersigned John Quinn, and Messrs. Shearman & Sterling, would apply to this Court for leave to file briefs as *amici curiae*.

The application to file this brief is made pursuant to that notice.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1922

No. 919

FIRST NATIONAL BANK IN ST. LOUIS,
Plaintiff-in-error

vs.

STATE OF MISSOURI, AT THE INFORMATION
OF JESSE W. BARRETT, ATTORNEY GENERAL

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI

BRIEF OF AMICI CURIAE

In view of the importance of the questions involved in this cause, particularly with reference to the right of national banks to establish branch offices, the undersigned, who are counsel for the National Bank of Commerce in New York, which is vitally interested in that question, beg to submit this brief as amici curiae.

POINT I

THE STATE OF MISSOURI HAS NO POWER, EITHER BY LEGISLATIVE OR JUDICIAL ACTION, TO LIMIT THE NUMBER OF BANKING HOUSES OR OFFICES OF A NATIONAL BANK, AND THE PROVISIONS OF SECTION 11737 OF THE LAWS OF THE STATE OF MISSOURI, SO FAR AS THE PROVISIONS OF THAT SECTION PURPORT TO BE A LIMITATION UPON THE ACTIVITIES OF A NATIONAL BANK, ARE UTTERLY NULL AND VOID.

The opinion of the Supreme Court of Missouri in this cause held squarely that the attempt of the respondent "to establish a branch bank is not only an act in excess of its corporate powers but in violation of an express Statute" (Record, printed page 15).

The Court below, referring to Section 11684 of the Revised Statutes of Missouri, 1919, held that "Branch banks, not having been permitted by the state law either by express terms or necessary implication, the well recognized canon of construction will authorize the exclusion of this power from those granted."

In an earlier portion of the opinion of the Supreme Court of Missouri, that Court held that the establishment of a branch was in excess of the powers of a national bank under the Federal Law. It then proceeded to state that it was not only an act "in excess of its corporate powers" but that it was an act "in violation of an express Statute", namely, the Statute of Missouri, and hence that the writ of quo warranto invoked by the relator was "an appropriate remedy under the circumstances" (Record, printed page 15).

In order to demonstrate that the opinion of the Supreme Court turned upon the claim that the act of the plaintiff-in-error in establishing a branch bank was "in violation of an express Statute", we may summarize the opinion of the Supreme Court of Missouri briefly as follows:

(a) That the establishment of that branch was in excess of the corporate powers of the plaintiff-in-error under the Federal Statutes.

(b) That it was in violation of the Statute of the State of Missouri.

(c) That a writ of quo warranto was a proper remedy available to the State of Missouri. And

(d) That the State Court of Missouri was the proper tribunal.

The Supreme Court of Missouri in rendering its opinion in this cause enforced the provisions of Section 11737 of the Revised Statutes of Missouri of 1919. But for the provisions of that Section the writ of quo warranto would not have been granted.

It is true that just prior to invoking the provisions of Section 11737 the Court did refer to the provisions of Section 11684 of the Missouri Law. The provisions of that section are that "no corporation, domestic or foreign, other than a corporation formed under or subject to the banking laws of this State or of the United States, *except as permitted by such laws*, shall by any implication or construction be deemed to possess the power of carrying on the business of" banking or exercising any of the banking powers therein specified.

The Missouri Supreme Court having demonstrated, as it thought, to its own satisfaction, that the act of the plaintiff-in-error in establishing the branch in question was in violation of the Federal Act, then went on to hold that the state law forbade the establishment of the branch because the state law provides that corporations could only transact such business as is permitted by the laws of the United States or of the state.

On this point the Court below said (Record, printed page 15):

> "Branch banks not having been permitted by the state law, either by express terms or necessary

> implication, the well recognized canon of construction will authorize the exclusion of this power from those granted".

But the Court then brushes that conclusion aside and says:

> "Reliance upon this rule is, however, unnecessary in the presence of a subsequent section (§ 11737, R. S. 1919) in which it is provided 'that no bank shall maintain in this state a branch bank or receive deposits or pay checks except in its own banking house'. The attempt, therefore, of the respondent to establish a branch bank is not only an act in excess of its corporate powers but in violation of an express statute" (Record, printed page 15).

The decision of the Supreme Court of Missouri raises squarely the question of the extent to which state legislation may control the acts or powers of national banks. The real question is not whether quo warranto is the proper procedure or whether the state court of Missouri was the proper tribunal in which to try out the issues in the case at bar. The question is as to the power of the state of Missouri, however exercised and by whatever remedies or procedure or in whatever court, to direct and control the powers of national banks.

This Court has frequently stated the rules with respect to the limits of state jurisdiction over national banks. That jurisdiction has been stated to be limited to statutes which do not (a) expressly conflict with the laws of the United States or (b) frustrate the purpose for which the national banks were created or (c) impair their efficiency to discharge the duties imposed upon them by the law of the United States

The Supreme Court of Missouri in its opinion stated (Record, printed page 13) that "The information filed herein by the Attorney-General does not involve the commission of an act in conflict with the laws of the United States nor does it tend to impair the efficiency of any agency of the National government. It cannot, therefore, be said to be in conflict with the rule above announced and hence does not violate it".

We contend that that statement in the opinion of the Court below is erroneous. We contend that an examination of the cases decided in this Court conclusively show that said section 11737 of the Revised Statutes of Missouri is null and void, in so far as it purports to be applicable to national banks.

On this point the Court below reasoned that it had demonstrated that the establishment by a national bank of a branch is *ultra vires* and hence that the processes of the state, by its own statutes, "can be invoked to prevent the exercise of power by a national bank shown to be ultra vires under the law of its creation" (Record, printed page 13).

Our contention is that the statute of the state of Missouri under which the Supreme Court of Missouri upheld the writ of quo warranto was expressly in conflict with the laws of the United States and frustrated the purpose for which national banks were created, and tended to impair the efficiency to discharge the duties imposed upon them by the law of the United States, and hence that that section of the Missouri statute is null and void, so far as it purports to govern or attempts to govern national banks.

While the general rule with respect to state legislation

relating to national banks is as above stated, an examination of the cases will show that a more definite rule can be stated by which the validity or invalidity of such state statutes may be determined.

We will consider, first, state statutes relating to national banks, which have been held to be invalid.

Statutes which have been held to be invalid

(1) In *Davis* v. *Elmira Savings Bank*, 161 U. S. 275 (1895), a New York statute provided for the payment by the receiver of an insolvent bank in the first place of deposits in the bank by savings banks. It was held that when applied to an insolvent national bank it was in conflict with Section 5236 of the Revised Statutes of the United States directing the Comptroller of the Currency to make ratable dividends of the money paid over to him by such a receiver on all claims proved to his satisfaction or adjudicated in a court of competent jurisdiction, and was therefore void when attempted to be applied to a national bank.

This Court based its decision on the ground that (a) national banks are instrumentalities of the Federal Government; (b) that an attempt by a state to define their duties or control the conduct of their affairs is absolutely void wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation or impairs the efficiency of these agencies of the Federal government to discharge the duties for the performance of which they were created; and (c) that both statutes related to the same duty on the part of the officer of the insolvent bank, so that there was on the one hand the

statute of the state of New York, and on the other an exactly contrary statute of Congress and that the New York statute was void so far as it purported to apply to a national bank.

(2) In *Allen* v. *Carter,* 119 Pennsylvania, 192, a statute prohibiting bank cashiers generally from engaging in any other occupation was held invalid with respect to cashiers of national banks.

(3) In *Easton* v. *Iowa,* 188 U. S. 220, 229, 237 (1902), the president of a national bank was indicted under an Iowa statute making it a crime for a bank officer to receive deposits in his bank at a time when the bank was insolvent and when such insolvency was known to the defendant. The statute did not in terms apply to a national bank but applied to any bank. It was held that the state was without lawful power to make such a law applicable to banks organized and operated under the laws of the United States.

The Supreme Court of Iowa argued that the acts of Congress provided no penalty for the fraudulent receiving of deposits; that the state statute was in the nature of a police regulation, having for its object the protection of the public from the fraudulent acts of bank officers; that the mere fact that in violating the law of the state the defendant performed an act pertaining to his duty as an officer of the bank, did not in any manner interfere with the proper discharge of any duty he owed to any power, state or Federal; that it was not intended by any act of Congress that officers of a national bank should be clothed with the power to cheat and defraud its patrons; that national banks are organized and their business prosecuted for private gain; and that no reason can be con-

ceived of why the officers of such banks should be exempt from the penalties prescribed for fraudulent banking.

With respect to those contentions this Court said:

> "We think that this view of the subject is not based on a correct conception of the Federal legislation creating and regulating national banks. That legislation has in view the erection of a system extending throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the States."

The Court held that it was not altogether true that there was no act of Congress prohibiting the receipt of deposits by national banks or their officers when a bank was insolvent; and that there were apt provisions, sanctioned by severe penalties, which were intended to protect the depositors and other creditors of national banks from fraudulent banking.

The Court further quoted from the case of *Prigg* v. *Pennsylvania*, 16 Peters, 539, as follows:

> "'If Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner, and in a certain form, it cannot be that state legislatures have a right to interfere, and, as it were, by way of complement to the legislation of Congress, to prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose. In such case, the legislation of Congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be any farther legislation to act upon the subject matter. Its silence as to what it does not do, is as expressive of what its intention is as the direct provisions made by it.'"

(4) A statute providing that every corporation "formed under the laws of this or any other state" shall

file in the office of the secretary of state a statement of its location and the name of an agent upon whom process must be served, has been held not to be applicable to national banks. *Owensboro First National Bank* v. *Commonwealth*, 33 Southwestern Reporter, 1105; 17 Kentucky Law, 1167.

(5) The cases with respect to interest and usury as it affects national banks clearly state the rule that WHERE THE FEDERAL LAW PURPORTS TO EXPRESS A COMPLETE SET OF RULES WITH RESPECT TO ANY SET OR CLASS OF POWERS OF NATIONAL BANKS, THE STATES HAVE NO JURISDICTION TO INTERFERE BY STATE LEGISLATION.

In the case of *Farmers' etc. National Bank* v. *Dearing*, 91 U. S. 29, 32 (1875), the question presented was whether the discount of a note by a national bank organized under the National Banking Act at a greater rate of interest than allowed by the statute of the state where such bank was located, rendered it liable to the penalty for usury provided by the state statute.

This Court held that the state had no power to impose any penalty, as the only penalty that could be imposed was that provided in the Federal laws. The Court said, with respect to the Federal statutes regarding the amount of interest that a national bank might charge, that:

> "These clauses, examined by their own light, seem to us too clear to admit of doubt as to any thing to which they relate. They form a system of regulations. All the parts are in harmony with each other, and cover the entire subject."

(6) A similar question again arose in the case of *Barnet* v. *National Bank*, 98 U. S. 555 (1878). In that case a suit was brought by a national bank against all the

parties to a bill of exchange discounted by it, to recover the amount thereof. The acceptor had made an assignment for the benefit of his creditors. It was held that his assignees could not set up, by way of counterclaim or setoff, that the bank, in discounting a series of bills of their assignor, the proceeds of which it used to pay other bills, knowingly took and was paid at a greater rate of interest than was allowed by law. This Court held that the National Banking Act having prescribed that, as a penalty for such taking, the person paying such unlawful interest, or his legal representative, may, in any action of debt against the bank, recover back twice the amount so paid, he can resort to no other mode or form of procedure.

This Court held that the provisions of the Federal law with respect to interest were exclusive of the state statutes.

(7) A recent case decided by the United States District Court for the Western District of Missouri clearly limits the power of the state on the facts therein appearing. That is the case of *Fidelity National Bank & Trust Company of Kansas City* v. *Enright,* 264 Fed. Rep. 236, 239 (1920). In that case the complainant, under the name of the Fidelity Trust Company, was formerly a trust company organized under the laws of the State of Missouri as such. Later it reorganized as a national banking corporation, clothed by the Federal Reserve Board with the right to act as trustee, executor, etc., or in any other capacity in which state banks, trust companies or other corporations which come into competition with national banks are permitted to act under the laws of the State of Missouri. In such capacity it took the name of "Fidelity

National Bank & Trust Company of Kansas City, Missouri," which name was duly approved by the Comptroller of the Currency, as provided by law. The state Banking Commissioner of Missouri took the position that in the discharge of its functions as a trust company under the law named, the complainant was acting in violation of the law of the state of Missouri, which provided that no corporation unless organized under the laws of the state of Missouri should use the words "Trust" or "Trust Company" as part of its name.

The Court held that the use of the name was proper, and said:

> "When the government of the United States enters any field over which Congress is given express, or necessarily implied, jurisdiction, it appropriates that field to the fullest extent necessary to insure the complete and effective exercise of its sovereignty. The name of a national bank must be approved by the Comptroller of the Currency. It can be changed, or its use interfered with, by no other authority. We have here, then, a national bank, empowered by the laws of the United States to act in a fiduciary capacity, and bearing a name confirmed by national authority. Clearly, any act on the part of the state which impairs, hampers, embarrasses, restricts, or, in effect, wholly prevents, the discharge of its functions as a national banking institution with the incidental powers enumerated, must be void, because in express conflict with the paramount laws of the United States."

(8) In *Van Reed* v. *People's National Bank of Lebanon*, 198 U. S. 554 (1904), this Court construed section 5242 of the Revised Statutes of the United States, which provides that no "attachment, injunction or execution shall be issued against" a national bank or its property "before

final judgment in any suit, action, or proceeding, in any state, county, or municipal court." This Court held that that statute ousted the jurisdiction of state courts to attach property of national banks, any state law to the contrary notwithstanding.

Statutes which have been held to be valid

In order to show the subjects as to which state statutes have been held to be applicable to national banks, we refer to the following cases in which state statutes have been held to be valid:

(1) In the case of *McClellan* v. *Chipman*, 164 U. S. 347, 356-357 (1896), referred to in the opinion of the Missouri Supreme Court, in the case at bar (Record, printed page 13), this Court considered the provisions of sections 96 and 98 Chapter 157 of the Public Statutes of Massachusetts. Those statutes invalidated preferences made by insolvent debtors and assignments or transfers made in contemplation of insolvency. It was held that they did not conflict with the provisions contained in sections 5136 and 5137 of the Revised Statutes of the United States relating to national banks and to mortgages of real estate made to them in good faith by way of security for debts previously contracted, and that such statutes were valid when applied to claims of such banks against insolvent debtors.

This Court quoted *National Bank* v. *Commonwealth*, 9 Wallace 362, to the effect that national banks "'are subject to the laws of the state, and are governed in their daily course of business far more by the laws of the State than of the nation. All their contracts are governed and

construed by state laws. Their acquisition and transfer of property, their right to collect their debts, and their liability to be sued for debts, are all based on state law. *It is only when the state law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional.*'" (italics ours)

The Court reconciled that case with the case of *Davis* v. *Elmira Savings Bank* (*supra*), and said:

> "These two propositions, which are distinct, yet harmonious, practically contain a rule and an exception, the rule being the operation of general state laws upon the dealings and contracts of national banks, the exception being the cessation of the operation of such laws whenever they expressly conflict with the laws of the United States or frustrate the purpose for which the national banks were created, or impair their efficiency to discharge the duties imposed upon them by the law of the United States."

It will thus be seen that that case decided that the state laws are invalid whenever they (a) expressly conflict with the laws of the United States, or (b) frustrate the purpose for which the national banks were created, or (c) impair their efficiency to discharge the duties imposed upon them by the law of the United States.

(2) In *Guthrie v. Harkness*, 199 U. S. 148 (1905), a stockholder of a national bank applied for leave to inspect the books, accounts and loans of the bank, which was refused him. In a suit in a Utah court, the court enforced a state statute providing penalties for refusal of an inspection of corporate books. That decision was affirmed in this Court.

The Court discussed section 5241 of the Revised Statutes with respect to visitorial powers, and held that the stockholder was asserting a right which was not forbidden by the Federal Statutes.

Among other statutes that have been held valid as applicable to national banks, have been statutes providing that where cotton has been sold under a cash contract, the title shall not pass to the buyer until the price has been paid (*Augusta National Bank* v. *Augusta Cotton, etc. Company*, 104 Georgia 403); prohibiting recovery on a note given for the purchase price of goods sold in violation of a state statute (*Hanover National Bank* v. *Johnson*, 90 Alabama 549); giving to stockholders reasonable access to an inspection and examination of the books of the bank (*Winter* v. *Baldwin*, 89 Alabama 483); requiring the cashiers of national banks to file lists of stockholders, etc. with county clerks (*Waite* v. *Dowley*, 94 U. S. 527); providing for the levy on and sale under execution of bank stock (*Braden's Estate*, 165 Pennsylvania 184); providing for the issuance of a certificate of stock in the place of one lost by the holder, on application to the Supreme Court of the State (*Matter of Hayt*, 39 Misc. 356); allowing a national bank which has been reorganized as a state bank to prosecute or defend a claim in its old corporate name (*Thomas* v. *Farmers' Bank*, 46 Md. 53); placing notes payable and negotiable at banks organized in the state under the state or Federal laws, and endorsed to, or discounted by, any such bank on the same footing as foreign bills of exchange (*Merchants' National Bank* v. *Ford*, 124 Kentucky 403); providing that no person, corporation or association, except savings banks incorporated in the state, shall make use of words indicating that a place of business is the office of a savings bank, nor make use of any printed or written matter having words indicating that a business is the business of a savings bank, nor receive deposits and transact business in the

manner of a savings bank (*State* v. *People's National Bank*, 75 New Hampshire 27, But see *Fidelity National Bank & Trust Company of Kansas City* v. *Enright*, 264 Fed. Rep. 236 above discussed which is contrary. An attachment law enabling a bank within the state to discount with safety paper which a bank without the state could not discount without risk (*Hawley* v. *Hurd*, 72 Vermont 122).

The rule deducible from the foregoing cases with respect to the exclusive Federal control over national banks has been well summed up in a note in 21 Harvard Law Review 136 as follows:

> "EXCLUSIVE FEDERAL CONTROL OVER NATIONAL BANKS.—It was early settled that Congress had the power to create national banks, as instruments 'necessary and proper' for carrying on the fiscal operations of government. (*McCulloch* v. *Maryland*, 4 Wheat. (U. S.) 316.) And to enable these banks to exercise their national functions of providing a currency and of creating a market for government loans, the grant of ordinary banking powers is justified. (*Osborn* v. *Bank*, 9 Wheat. (U. S.) 738). Furthermore, to assure the efficiency of these federal agencies, it is necessary that both in the exercise of their national functions and in their ordinary banking business they should be protected from any state interference which might impair or destroy their usefulness. It is accordingly settled that a state cannot tax a national bank unless the federal government give special permission. (*McCulloch* v. *Maryland*, supra; *People* v. *Bank*, 123 Cal. 53). It seems obvious that any interference with the purely national functions of the bank is unconstitutional. The ordinary business, on the other hand, is done under the general state laws unless some special act of Congress covers the matter (*McClellan* v. *Chipman*, 164 U. S. 347). Thus, a national bank ordinarily takes title to property subject to the qualifications imposed by the state

law. (*Bank* v. *Augusta, etc. Co.*, 104 Ga. 403). Similarly, a state law, which exempts from trustee process negotiable paper transferred before due to a bank within the state, is valid although it works to the discrimination and disadvantage of a national bank without the state. (*Hawley* v. *Hurd, etc., Co.*, 72 Vt. 122). In this class of cases the state law interferes with the bank, but as it touches only the general business and does not conflict with any express law, it is upheld. But Congress, having the right to grant general banking powers, can regulate the exercise of those powers and protect the banks in that business. Unless the law be unconstitutional because not a reasonable exercise of the power to regulate or protect, or because contrary to some constitutional provision such as the Fourteenth Amendment, it will supersede the state law which formerly controlled. *The national laws may supersede all state laws on the subject, or they may be merely supplemental and overrule only the laws in direct conflict.* An example of the latter class is the case where the federal law mentions certain crimes of bank officers. For these crimes the officers can only be punished by the national government, but that does not prevent the state from punishing for other crimes committed by bank officers contrary to state laws. (*State* v. *Tuller*, 34 Conn. 280). *But if, on the other hand, the national government undertakes to make a system of rules and regulations covering an entire subject, such as the insolvency of a national bank, all state laws on the subject*, EVEN IF NOT IN DIRECT CONFLICT WITH THE FEDERAL LAW, *are annulled.* (*Easton* v. *Iowa*, 188 U. S. 220. See 17 Harv. L. Rev. 133). Similarly, the National Banking Act, which provides what interest the banks can charge and the results and penalties of taking usury, has been construed as *sweeping away all state usury laws as far as they affect national banks.* (*Farmers', etc. Bank* v. *Dearing*, 91 U. S. 29.)

"A recent New York case shows that far-reaching effect of this doctrine. The proposition is upheld that a note between A and B, which by state

> law is absolutely void for usury, is enforceable when discounted by a national bank. *Schlesinger* v. *Gilhooly*, 189 N. Y. 1. (See 20 Harv. L. Rev. 581). Thus, through the power to say that a defense given by the state shall not be good against a national bank, the whole law of the state as to usury is rendered ineffective, for a note otherwise void can be made enforceable, as to the principal at least, by a sale to a national bank. The result is astounding, but seems a logical consequence of the power of Congress to pass exclusive laws as to the business dealings of national banks."

We contend that in the case at bar the national government has undertaken "to make a system of rules and regulations covering an entire subject", that subject being the place of business of a national bank. Those rules are contained in Revised Statutes Sections 5134, 5136 and 5190.

By those statutes Congress undertook to provide the rules for the *place* (that is the city, town, village or county) where a federal bank should exercise its powers and the *location* within such place where those powers should be exercised.

Congress having legislated on that subject, no other or further legislation by states is permissible or valid with respect to national banks.

The court below in the case at bar undertook to lay down the rule that a state has power to prohibit any act by a national bank which a state court may find to be *ultra vires* of a national bank. We contend that that rule is erroneous. We contend that the true rule is that where Congress has undertaken to lay down rules and regulations for the conduct of a national bank "covering an entire subject", a state has no jurisdiction to legislate on that subject at all and it is not competent for a state

court to undertake to inquire whether the activities of a national bank within the class covered by that subject are or are not *ultra vires*.

We contend that we are supported by the authorities above cited that Congress having undertaken to lay down a complete set of rules and regulations with respect to the location of the place or places of business of a national bank, a state has no jurisdiction on the subject whatever.

It follows that the provisions of section 11737 of the laws of the State of Missouri are inapplicable to national banks and are, in as far as they purport to be a limitation upon the activities of a national bank, utterly null and void.

The Supreme Court of Missouri in the case at bar relied upon and cited at considerable length (Record, printed pages 13 and 14) the decision of the Supreme Court of Kentucky in the case of *First National Bank* v. *Commonwealth*, 143 Kentucky 816. In fact, it may be said that the opinion of the Supreme Court of Missouri in the case at bar rests solely upon the authority of the decision of the Supreme Court of Kentucky in the case of *First National Bank* v. *Commonwealth*. In that case it was held that real estate held by a national bank after the expiration of the five-year period allowed for national banks to hold real estate lawfully acquired by them, was held by the national bank *ultra vires* and was subject to the laws of escheat of the state of Kentucky and did accordingly escheat to the state of Kentucky. Our contention is that the decision of the Supreme Court of Kentucky in that case is contrary to the laws of the United States and to the decisions of this Court.

Congress, in Section 5137 of the United States Revised Statutes, dealt with the entire subject of the holding of real estate by national banks and dealt with it completely. Section 5137 provides that a national banking association may purchase, hold and convey real estate for the "following purposes and for no others." It then goes on to define that it may hold such real estate:

> "First. Such as shall be necessary for its immediate accommodation in the transaction of its business.
>
> "Second. Such as shall be mortgaged to it in good faith by way of security for debts previously contracted.
>
> "Third. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.
>
> "Fourth. Such as it shall purchase at sales under judgments, decrees, or mortgages held by the association, or shall purchase to secure debts due to it."

Section 5137 then contains the following provision:

> "But no such association shall hold the possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than five years."

Congress therefore dealt with the subject of what real estate could be held by national banks and how long it might be held. Congress legislated upon the subject, and having legislated its will is supreme and cannot be interfered with by any state law. It has been held over and over again that in case of the violation of those provisions of the Federal act respecting real estate, the Federal Government only may take advantage of those violations or object to them.

It appears from a reading of the Kentucky case that the Comptroller in that particular case had approved the holding by the national bank of the real estate beyond the five-year period specified in Section 5137. Yet in spite of that the Kentucky court held that it escheated to the state. We respectfully contend that that decision of the Supreme Court is directly contrary to the decisions of this Court holding that where the Federal Government has undertaken "to make a system of rules and regulations covering the entire subject" a state has no jurisdiction whatever to legislate upon that subject.

The following are a few of the cases for the rule that where the National Banking Act prohibits certain acts without imposing any penalty or forfeiture the validity of executed transactions can be questioned only by the United States.

Thompson v. *St. Nicholas National Bank,* 146 U. S. 240 (1892), involved a wrongful certification of checks by the defendant bank. This Court said, at page 251:

> "Moreover, it has been held repeatedly by this court that where the provisions of the national banking act prohibit certain acts by banks or their officers, without imposing any penalty or forfeiture applicable to particular transactions which have been executed, their validity can be questioned only by the United States, and not by private parties. *National Bank* v. *Matthews,* 98 U. S. 621; *National Bank* v. *Whitney,* 103 U. S. 99; *National Bank of Xenia* v. *Stewart,* 107 U. S. 676."

Reynolds v. *Crawfordsville First National Bank,* 112 U. S. 405 (1884). This was a bill by the bank to quiet title to land. To the objection that the holding of the land by the bank was *ultra vires,* this Court said, on page 413:

> "But if there was any force in this objection to the title, it could not be raised by the debtor, for where a corporation is incompetent by its charter to take a title to real estate, a conveyance to it is not void, but only voidable; the sovereign alone can object. It is valid until assailed in a direct proceeding instituted for that purpose."

Fortier v. *New Orleans Bank*, 112 U. S. 439 (1884). This was an action for the foreclosure of a mortgage. On page 451 this Court said:

> "Complaint is made in behalf of Mr. Fortier that the court erred in enforcing by its decree a loan of money made by a national bank on the security of a mortgage; the contention being that the loan on such a security was unauthorized by the national banking act, and was therefore void. In the case of *National Bank* v. *Matthews*, 98 U. S. 621, and *National Bank* v. *Whitney*, 103 U. S. 99, this point is expressly decided against the contention of the defendant, and in the latter case it was also held that an objection to the taking by the bank of a mortgage lien as security for future advances could only be made by the United States."

National Bank v. *Whitney*, 103 U. S. 99 (1880). This case presented the validity of the holding of a mortgage upon real estate by the bank. The Court referred to the case of *National Bank* v. *Matthews*, 98 U. S. 621, and said on page 102:

> "The decision in the case cited controls the present case, and in conformity with it we must hold that the mortgage to the bank, so far as the subsequent incumbrances are concerned, is to be regarded as a valid security for the future advances to the mortgagor. Whatever objection there may be to it as security for such advances from the prohibitory provisions of statute, the objection can only be urged by the government. *Fleckner* v. *United States Bank*, 8 Wheat. 338-355."

National Bank v. *Matthews*, 98 U. S. 621 (1878). This case involved the validity of the holding by a national bank of a deed of trust to secure a loan on real estate. This Court said on page 628:

> "Where a corporation is incompetent by its charter to take a title to real estate, a conveyance to it is not void, but only voidable, and the sovereign alone can object. It is valid until assailed in a direct proceeding instituted for that purpose."

The Court said also on page 629:

> "The impending danger of a judgment of ouster and dissolution was, we think, the check, and none other contemplated by Congress. That has been always the punishment prescribed for the wanton violation of a charter, and it may be made to follow whenever the proper public authority shall see fit to invoke its application."

The only other case relied on by the court below to sustain the validity of the state act is that of this Court in the case of *McClellan* v. *Chipman* (*supra*). It is a sufficient answer to the citation of that case to state that the acts done by the national bank in that case were part of the ordinary business of the bank and Congress had passed no special legislation on the subject.

POINT II

THE ACT OF THE PLAINTIFF IN ERROR IN ESTABLISHING A BRANCH OFFICE IN THE PLACE DESIGNATED IN ITS CERTIFICATE OF ORGANIZATION WAS EITHER EXPRESSLY OR IMPLIEDLY AUTHORIZED BY THE FEDERAL STATUTES.

The act of the plaintiff in error complained of by the Attorney General of the State of Missouri was the establishment of a branch office or agency "in a separate building located several blocks from the banking house before mentioned" in which the plaintiff in error "is engaged in the business of banking, discounting bills, notes and other evidences of debt, receiving deposits and paying out the same upon check, buying and selling bills of exchange and lending money" (Record, printed page 1).

The judgment restrained the plaintiff in error from conducting said branch and held that it had "usurped and is usurping authority, powers and privileges denied it by the laws of the United States and of this State" (Record, printed page 7).

The Supreme Court of Missouri therefore ordered and adjudged that the respondent "be ousted from the privilege of operating" said branch, or any other branch, and from conducting "a banking business thereat" (Record, printed page 8).

The two sections of the Revised Statutes of the United States which are involved here are Section 5134 and Section 5190.

The pertinent provisions of Section 5134 are as follows:

> "Sec. 5134.—The persons uniting to form such an association shall, under their hands, make an

> organization certificate, which shall specifically state: * * *
>
> "Second. The place where its operations of discount and deposit are to be carried on, designating the State, Territory, or district, and the particular county and city, town or village."

Section 5190 of the Revised Statutes provides as follows:

> "Sec. 5190.—The usual business of each national banking association shall be transacted at an office or banking house located in the place specified in its organization certificate."

The question that arises here is whether the power of a national bank to establish a branch office in the place named in its certificate of organization is either an express or an implied power under the foregoing sections of the Revised Statutes. An implied power of a corporation is one that is (1) not expressly granted, but (2) not prohibited, and (3) one that is "needful, suitable and proper to accomplish the object of the grant and one that is directly and immediately appropriate to the execution of these specific powers". *People* v. *Pullman Palace Car Co.*, 175 Illinois 125, 136.

(1) It is by no means conceded, as was argued by the Supreme Court below, that there is no express grant of power to establish a branch office.

The word "an" in the phrase "at an office or banking house located in the place specified in its organization certificate" in Section 5190 is not necessarily a singular term.

> "The indefinite article 'a', while properly placed before a singular noun and having the meaning 'one,' is not necessarily a singular term, and is often used in the sense of 'any,' and is then applied

to more than one individual object." 1 *Corpus Juris*, page 1.

In *Thompson* v. *Wesleyan Newspaper Association*, 8 C. B. 849, a deed of settlement of an English company registered under the English statute provided that it should not be lawful for the directors to contract any debts in conducting the affairs of the company beyond one hundred pounds at any one time, except in the case of the purchase money for a newspaper, of which the board of directors might leave unpaid any part not exceeding one thousand pounds and might issue "*a promissory note*" or accept "*a bill of exchange*" on behalf of the company for such balance. It was held that the substance of the authority was that the directors might contract a debt to the amount of one thousand pounds and secure it by a negotiable instrument, and that the directors having contracted a debt to that amount were not precluded from giving security for it with its legal accretions by *several* notes or bills instead of a *single* note or bill.

Other cases cited in support of the proposition that the indefinite article is not necessarily a singular term, are: *Lowe* v. *Brooks*, 23 Georgia 325, 328. *Thompson* v. *Stewart*, 60 Iowa 223, 225. *Commonwealth* v. *Watts*, 84 Kentucky 537, 541. *National Union Bank* v. *Copeland*, 141 Mass. 257. *Snowden* v. *Guion*, 101 N. Y. 458, 463. *Dobson* v. *Litton*, 5 Coldw. (Tenn.) 616, 619. 28 *L. R. A.* 153.

In *Snowden* v. *Guion*, 101 N. Y. 458, 463 (1886) the United States Lloyds issued an open policy of marine insurance which became operative only by special endorsement, describing the particular risk assumed. As the policy was originally issued, the underwriters were liable for loss of "animals caused directly by stranding, sinking,

burning or collision". That was subsequently modified by inserting after the words "directly by" the words "a sea", so that the policy covered loss of animals "caused directly by *a sea* stranding, sinking, burning or collision".

A shipment of live cattle was made under that policy. The steamer carrying the cattle encountered a severe storm. The waves caused it to "roll tremendously". The cattle were thrown down violently and most of them were killed.

In an action upon the policy it was argued on behalf of the company that the words in the policy "a sea" were meant to cover the effect of one or more waves upon the motion of the vessel. The Court of Appeals admitted that the phrase was ambiguous. But that court held that the loss was caused directly by "a sea" within the meaning of the policy and that the insurers were liable. The risk contemplated was some effect of "a sea" upon a vessel. The approximate result of such "a sea" would be a loss to the property insured. That was not limited to the effect produced by *one or more specific and particular waves*, as distinguished from the general storm and commotion of the water in such storm. The Court of Appeals held that the policy did not "refer to some particular wave or surge, separate from its fellows, which worked its own peculiar and special destruction". The policy covered the effect of "seas" and was not limited to a single "sea".

In the case of *National Union Bank* v. *Copeland*, 141 Mass. 257, a debtor made an assignment in writing to trustees for the benefit of such creditors as should execute the instrument of assignment within sixty days from the date thereof, or within such further time as the trustees should

allow "in and by *a writing*" endorsed on the instrument of assignment. It was held that the term *"a writing"* did not limit the trustees to only one extension of the time in which creditors could become parties to the extension.

The case of *State* v. *Martin*, 60 Ark. 353, construed a provision of the Constitution of Arkansas which provided that for each circuit "a judge shall be elected". The Arkansas legislature passed an act providing for *an additional judge* for the Sixth Circuit. It was held that the meaning of the Constitution was that there should be "AT LEAST ONE JUDGE" for each circuit, and that there was no limitation upon the legislature to provide for more "if the necessity arises". The court held that the word "a" is "in no sense a word of limitation".

In a note to *State* v. *Martin*, in 28 *Lawyers' Reports Annotated* 153, it is stated:

> "The constitutional construction made by the above case is so fully discussed therein as to need nothing further. The contention that the article "a" should be construed as equivalent to "one" raises a novel question of much practical importance in constitutional law, but which, in the light of the above opinion, can hardly be considered doubtful".

In the opinion of the court below (Record, printed page 9) it was stated that "no express power to establish a branch bank appears in either of these statutes." If the principle enunciated in *State* v. *Martin* be followed, that the word "a" means *at least one*, then there was an express power to establish one office and as many more as might be necessary.

It is therefore by no means clear that there is not an express grant of power under Section 5190 to national

banks to transact their business at "any office" or "any banking house" located in the place "specified in its organization certificate".

If, however, it should be held that there is no such express grant of power, then the question arises

(2) Whether there is any prohibition in the Federal statutes of a national bank maintaining more than one office or banking house, that is whether the use of the words "an office or banking house" limits a national bank to the use of *one* office or *one* banking house in the place specified in its organization certificate. In its opinion the Supreme Court of Missouri states that "the unmistakable character of the words employed and the purpose to be accomplished did not in our opinion authorize such an interpretation of the section as to enable its terms to be read in the plural as well as the singular number." (Record, printed page 10).

Again the Court below said:

> "This location having been established, it is within the contemplation of the statute that the power of the bank is to be there exercised. Otherwise the words 'an office or banking house' cease to be specific, and instead of being singular in number may be construed as plural, and thus permit the establishment of banks in as many places within the county, city or town as the judgment of the directors may prompt. Such a construction finds no resting place in reason." (Record, pages 9 and 10).

We have shown above that the word "an" as used in Section 5190 is not necessarily a singular term. If, however, this Court should hold that it is a singular term, then the statement of the Supreme Court of Missouri last quoted flies in the face of a principle of statutory

construction long recognized at the common law and now established in the statutory construction laws not only of the United States but of many of the several States.

The rule has been stated as follows:

> "When necessary to give effect to the legislative intent, words in the plural number will be construed to include the singular, and words importing the singular only will be applied to the plural of persons and things." 36 *Cyc* 1123.

The following cases are cited in support of that proposition: *Hogan* v. *State*, 36 Wisconsin 226, 247. *Missouri* v. *Kansas City, etc. Railway Co.*, 32 Fed. Rep. 722. *People* v. *Aurora*, 84 Illinois 157. *Ellis* v. *Whitlock*, 10 Missouri 781. *State* v. *Levin*, 108 Atlantic Reporter 10, 13 (New Jersey). *In re Op*, 117 Atlantic Reporter 97 (Rhode Island).

That very rule has been incorporated in the Revised Statutes of the United States (Section one R. S.) as follows:

> "In determining the meaning of the revised statutes, or of any act or resolution of Congress passed subsequent to February 25, 1871, words importing the singular number may extend and be applied to several persons or things; * * *"

Thus the Supreme Court of Missouri, in stating that the construction for which we contend "finds no resting place in reason", makes that statement in the face of a statute of the United States which officially permits an interpretation contrary to that which the Missouri court placed upon the statute.

It is true that the rule at the common law and the United States statute with respect to interpreting words in the singular number does not make it mandatory that such

words shall be construed in the plural number. They do, however, allow such a construction "when necessary to give effect to the legislative intent."

As this Court stated in *United States* v. *Oregon, etc. Railroad*, 164 U. S. 526, 541 (1896):

> "The general rule is that 'words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular', as provided in the first section of the Revised Statutes."

In *Hogan* v. *State* (*supra*) the statute provided that an act, in order to constitute murder in the second degree, must be imminently dangerous to "others". It was held that the word did not imply that the act must be dangerous to several persons but "to other or others * * * than the persons committing it".

That Section 5190 of the Revised Statutes is not to be construed as containing a strict limitation to a single office or a single banking house, but is to be construed reasonably, is shown in the case of *Merchants National Bank* v. *State National Bank*, 10 Wallace 604, 650 (1870). In that case the cashier of the State National Bank certified checks drawn on the State National Bank and delivered the checks to the Merchants National Bank in payment of gold certificates. Those checks were certified by the cashier of the State National Bank not at his own bank but at the banking office of the Merchants National Bank. The action was brought against the State National Bank upon its certification. The State National Bank defended on the ground, among others, that the cashier had not certified the checks at its banking house and that the act of the cashier in certifying the checks was therefore *ultra vires*.

It was held by this Court that the State National Bank was liable upon the certification of its cashier, wherever made.

At the end of a long opinion which had chiefly to do with the powers of the cashier of the bank, this Court said:

> "It is objected that the checks were not certified by the cashier at his banking house. *The provision of the act of Congress as to the place of business of the banks created under it must be construed reasonably.* The business of every bank, away from its office—frequently large and important—is unavoidably done at the proper place by the cashier in person, or by correspondents or other agents. In the case before us, the gold must necessarily have been bought, if at all, at the buying or the selling bank, or at some third locality. The power to pay was vital to the power to buy, and inseparable from it. There is no force in this objection." Citing *Bank of Augusta* v. *Earle*, 13 Peters 519; *Pendleton* v. *Bank of Kentucky*, 1 T. B. Munroe 182.

When Congress provided in Revised Statutes, Section 5190, that "the usual business of each national banking association shall be transacted at an office or banking house located in the place specified in its organization certificate", the legislative intention was probably no other than evinced in legislative requirements providing for the location of the principal offices of corporations generally.

In *Jossey* v. *Georgia and Alabama Railway Company*, 102 Georgia 706, the charter of the corporation provided that: "The principal office and headquarters of said railroad company for the transaction of the business of the company appertaining to its management shall be in the city of Americus, Sumter county, Georgia."

For the management of its railway business the directors of the corporation had organized various departments, consisting of a department for the management of its traffic, a department for auditing its accounts, and others of like character organized for special purposes connected with the administration of its railway business. It projected the removal of these various offices to a point other than the city of Americus, and the establishment of branch offices of like character at other points for the more convenient transaction of its business. To prevent this a petition in equity was filed by certain citizens of the city of Americus and stockholders of the company to enjoin the contemplated removal of these respective offices, alleging that the principal office of the corporation was fixed by its charter in the city of Americus, and having been so fixed, a change of the corporate situs could not be accomplished directly or indirectly by the action of the directors, without procuring an amendment of the charter authorizing such a step. The defendant answered, denying its purpose to remove the principal office of the corporation from the point designated in the charter, but admitting a purpose to establish at the city of Savannah a branch office in connection with its traffic and auditing departments.

The injunction was refused, and on appeal the decision of the lower court was affirmed. The Appellate Court said:

> "The business of a railroad corporation, because of its nature, must of necessity be conducted in places other than that fixed by its charter as the place of location of its principal office. While the latter place must be the point at which the corporation as a corporate entity resides, it is indispensable

to its business that it shall be enabled elsewhere to establish offices of a purely administrative character; and a distinction must be taken between the principal office of a corporation proper, and those administrative offices which may from time to time be created by the corporation for the more convenient transaction of the business for the conduct of which it was created. It must have a place at which it may be sued, at which its corporate functions may be performed; but this does not negative the right to establish other places for the transaction of the industrial business of the corporation. As will be seen by the extract from the charter which we have quoted, the principal office and headquarters of the railway company for the transaction of the business of the company appertaining to its management, that is to the management of the corporation itself, was required to be located in the city of Americus. To that extent the charter speaks in no uncertain terms; and touching the business which is to be transacted in the management of the affairs of the company, no other place can be substituted for that provided by the positive statement of the charter. Are the offices intended to be removed corporate offices in the proper sense? The office of the president of the company, and the offices of that class of officers who stand for and represent the corporate entity, must be there located. The books of the company showing the subscription to its stock must be there kept for the information of its stockholders and shareholders. There must be transacted the corporate business proper, there its profits must come home to it to be distributed among its stockholders, and there must be kept the offices of those persons who are engaged in the management of the corporate affairs. There also its corporate meetings must be held. As we have seen, this constitutes the principal office of the corporation; but as to mere administrative offices, there is no requirement of the charter that they shall be located at any particular point. It is indispensable to the successful operation of the business for which the corporation was created, that the creation, man-

> agement and control of these administrative offices must rest within the discretion of the directory; and hence when the corporation fixes its principal office at a particular point, the words 'principal office' must be held to include only such offices as are created by the charter, or by the directory in pursuance of the charter, for the administration of the corporate affairs proper."

While the foregoing case related to a railway company organized under the laws of Georgia, it is reasonable to assume that it was the intent of Congress in enacting Section 5190 of the Revised Statutes to provide with respect to national banks for a principal office analagous to the principal office of state corporations. All of the reasons stated in the opinion of the Georgia court for the establishment of branch administrative offices apply with equal force to national banks, as will be hereinafter shown.

A construction which would place national banks at a disadvantage in competition with state banks should be avoided. If the changed conditions of the banking business are indisputably such that a strict construction of the Statute, according to the letter of Section 5190, would work to the disadvantage of national banks and in favor of state banks, it would seem to be the duty of the court to construe Section 5190 so as not to place national banks at a disadvantage in competition with state banks.

The language of Judge Sanborn in the case of *Harper* v. *Victor*, 212 Fed. Rep. 903, 907 (1914), should be applied here. The court said in that case:

> "The reason of the law, as indicated by its general terms, should prevail over its letter, when the plain purpose of the act will be defeated by strict adherence to its verbiage".

To the same effect is the rule of statutory interpretation announced by this Court in *Lau Ow Bew* v. *United States*, 144 United States 47, 59 (1892). The Court said:

> "Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion."

The following cases are to the same effect: *United States* v. *Corbett*, 215 United States 233. *United States* v. *Oregon R. R. Co.*, 164 United States 526, 539. *Church of the Holy Trinity* v. *U. S.*, 143 U. S. 457. *Henderson* v. *Mayor of New York*, 92 U. S. 259. *Oates* v. *National Bank*, 100 U. S. 239.

In the case of *Holy Trinity Church* v. *United States*, 143 U. S. 457, 459, 1891, wherein a strict construction of the act of February 26, 1885, relative to alien contract laborers would have barred the Rector of Trinity Church in New York from coming to the United States as minister of that church, this Court said:

> "It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers. This has been often asserted, and the reports are full of cases illustrating its application. This is not the substitution of the will of the judge for that of the legislator, for frequently words of general meaning are used in a statute, words broad enough to include an act in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act."

The right to establish more than one office or banking house within the "place" depends upon the construction

to be put upon Section 5190. The word "an" in that section is of doubtful meaning. In such case "rules of statutory construction are to be invoked as aids to the ascertaining of the meaning or application of the words otherwise obscure or doubtful. They have no place, as this Court has many times held, except in the domain of ambiguity". *Russell Motor Car Co.* v. *United States*, decided April 9, 1923, No. 485.

Turning to the contentions of the respective sides in the case at bar on the one hand, it is contended that Congress by the words "an office or banking house" intended to limit the bank to the establishment of one office or one banking house. On the other hand, it is contended that the indefinite article "an" does not limit the number of offices to one but that it points out "one of a class containing more of the same kind."

In support of the last contention we submit that the word "an" is not used as a word of limitation. The intent of the Act is to require that the usual business of the bank shall be transacted at a fixed office or banking house located in the "place" specified in its charter, as distinguished from some place other than an office or banking house. It is the intent to be gathered from the Act that the usual business of each national bank shall be transacted in some recognized and fixed office or banking house and shall not be ambulatory — that it shall not be a nomadic bank. This prohibition against a business office of the bank being moved from place to place should not, in reason, be held to limit the bank's entire transactions in one office or agency, so long as the identity and responsibility of the recognized main office or banking house is preserved.

It would be not only discriminatory against national banks but would be an absurd and illogical conclusion to so limit the rights of national banks to one office or banking house. It would ascribe to Congress an idea of public policy, which would allow additional offices to state banks when they became nationalized under Section 5155 of the Revised Statutes and would refuse additional offices to national banks, primarily organized as such, when expansion of business or movement of commercial and industrial centers shifted according to the development of the city. It is unreasonable to impute to Congress an intention to allow branches in the one case and to refuse it in the other.

A reasonable interpretation of Section 5190 would seem to be that a national bank has the right to do a general banking business anywhere within the city of its location; that it has the right to establish its offices anywhere within the city; that it may establish as many offices or agencies within the city as are needful, suitable, proper or such as are required to meet the legitimate demands of the usual business of modern banking.

(3) The authorities showing what powers are "needful, suitable and proper" to accomplish an object of a corporation or are "directly and immediately appropriate to the execution of specific powers" are cited in the brief of counsel for the plaintiff-in-error and need not be repeated here. But we wish to emphasize, however, the undoubted rule that whether or not a power is implied or incidental to express powers is to be determined from a consideration of all the facts and circumstances surrounding the business of a bank at the time the power is sought to be exercised.

One circumstance which must be considered and which we contend is controlling, is the fact that both state and national banks have found it necessary under modern conditions, and especially in large cities, to establish branch offices for the successful conduct of their business.

To show the extent of branch banking in the United States it is but necessary to state that the following twenty-one States permit branch banking under the laws of those States, as does also the District of Columbia:

Arizona, Arkansas, California, Delaware, Georgia, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Wyoming.

The extent to which national banks in recent years have been brought into competition with state banks and branches of state banks in many of the large cities of the United States is shown by the following compilation made in the office of the Comptroller of the Currency:

In Detroit, Michigan, there are three national banks and one branch office. The three national banks are in close proximity to each other in the downtown business section. In competition with those three national banks are fourteen State banks which have 189 state bank branches. To this number should be added eleven state banks in suburbs of Detroit. Those eleven state banks in the suburbs have ten branches.

In the District of Columbia fourteen national banks have seven branch offices. Thirty-six non-national banks have eight branch offices.

In Cincinnati there are twenty-two national banks with no branches. There are thirty-eight state banks with thirty branches.

In Columbus there are seven national banks with no branches. There are seven state banks one of which has seven branches.

In Cleveland there are three national banks with two national bank branch offices. There are eighteen state banks with a total of seventy-five state bank branches.

In New Orleans there is one national bank with no branch office. There are six state banks with thirty-eight branch offices.

In Atlanta there are three national banks with six branches. There are thirteen state banks, one of which has four branches.

In Nashville there are five national banks with no branches. There are nine state banks with seven branches.

In Richmond there are six national banks, one of which has four branch offices. There are twenty-three state banks with eight branches.

In Baltimore there are twelve national banks, one of which has two branch offices. There are forty-six state banks with twenty-one branches.

In Buffalo there are four national banks one of which has a branch office. There are twelve state banks with forty branches.

In Oakland, California, there are three national banks with no branch offices. There are seven state banks with thirty state bank branches.

In Boston there are thirteen national banks with one branch office. There are twenty state banks with twenty-three branches.

In San Francisco there are seven national banks with no branch offices. There are eighteen state banks with forty-three state bank branches.

In Los Angeles there are twenty-four national banks and six national bank branch offices. There are twenty-five state banks with one hundred and eight state bank branches.

In the City of New York there are thirty-two national banks with forty-three branches. There are nineteen state banks with one hundred and thirty-nine branches. There are twenty trust companies with sixty branches. It will thus be seen that as against the forty-three branches of national banks there are one hundred and ninety-nine branches of state banks and trust companies in competition therewith.

A power to establish branch offices that is so widely used both by state and national banks in so many of the cities of the United States is almost beyond argument a power which is "needful, suitable and proper" to accomplish the object of a bank and is "directly and immediately appropriate to the execution of specific powers" possessed by those banks.

Conditions in modern banking have changed radically, particularly in large cities, since 1864. In the early days of corporate organization in this country, corporations would have their principal office only in one place and do business only at the principal office. But the demands of business have required corporations to establish branches.

The same is true of banks. A bank has its principal office in a city or town and should have as many branches in that city or town as the needs of its customers require and as may be approved by the Comptroller of the Currency.

The above statistics are typical of the competition that national banks must meet in the conduct of their business at the hands of state banks. It would seem to follow that under the provisions of Section 5136 of the Revised Statutes of the United States, which provide that a national bank shall have power "to exercise by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking", national banks should have as such incidental power the right to conduct business in more than one office, if such branches are reasonably necessary for the proper conduct of its business.

POINT III

THE CONTINUED INTERPRETATION OF THE STATUTE BY THE COMPTROLLER OF THE CURRENCY WHO IS CHARGED WITH ITS EXECUTION IS IN FAVOR OF THE EXERCISE OF THE POWER CONTENDED FOR BY THE PLAINTIFF IN ERROR.

In the opinion herein of the Supreme Court of Missouri (Record, printed pages 12 and 13), it is stated with respect to the National Bank Act that:

> "In addition, it is a well-established rule of construction that a long continued interpretation of a statute by public officers charged with its execution, while not controlling upon the courts, is entitled to special consideration (*McAllister* v. *Cupples Station*, 283 Mo. 115; *State ex rel. Chick* v. *Davis*, 273 Mo. 660; *State ex rel. Kin. Tel. Co.* v. *Roach*, 269 Mo. 437; *Ewing* v. *Vernon Co.*, 216 Mo. 689).
>
> "Apropos of the foregoing, it is shown that the Attorneys General of the United States have uniformly construed the National Bank Act as not authorizing the establishment of branch banks".

Up to 1911 there was no settled practice as to authorizing or refusing to authorize the establishment of branch banks. In that year, upon the application of a national

bank for leave to establish a branch office the question was referred to the Attorney General for an opinion. The Attorney General gave as his opinion that such branch office was not permissible under the National Bank Act.

Such is the "long continued interpretation of a statute by public officers charged with its execution" which the Supreme Court of Missouri stated is "entitled to special consideration".

The fact is that the "continued interpretation" of the statute has been quite the other way. As against a single opinion of the Attorney General rendered in 1911, we have the fact that while the Attorney General of the State of Missouri brought the quo warranto proceedings from which this plaintiff in error appeals to this Court, for the purpose of preventing the exercise by a national bank of its right to maintain a branch bank, no such action of a similar kind has ever been brought by the Attorney General of the United States or by any officer or official of the United States against a national bank. There was ample opportunity to do so. Notwithstanding said opinion of the Attorney General, branches of national banks have been created, now exist and are being from time to time established.

The extent to which the Comptroller of the Currency, as an arm of the Executive Department, has authorized, sanctioned and approved the establishment of branch offices of national banks in some of the large cities of the United States is shown by the enumeration of the branches of national banks in the various cities specified above in this brief.

The existence of these branch offices evidences a long continued interpretation of the statute by a public officer charged with its execution.

It may be stated that in some cases those branches are continuations of branches of state banks which became national banks under the provisions of Section 5155 of the Revised Statutes. That Section is as follows:

> "It shall be lawful for any bank or banking association organized under State laws, *and having branches*, the capital being joint and assigned to and used by the mother-bank and branches in definite proportions, to become a national banking association in conformity with existing laws, *and to retain and keep in operation its branches, or such one or more of them as it may elect to retain;* the amount of the circulation redeemable at the mother-bank, and each branch, to be regulated by the amount of capital assigned to and used by each".

It is the undoubted fact that in some cases state banks having branches became national banks under the provisions of the foregoing section and then merged with another national bank. Upon that merger, however, the same question of the right and power of national banks to maintain branches arose. Indeed, the question arose upon such merger of the right to maintain what were originally the principal offices of the two merged banks. While Section 5155 of the Revised Statutes authorizes the continuation of branches of a state bank after it has become a national bank, there is nothing therein contained which gives express authorization for the further retention of those branches after the merger of the parent bank with another national bank. Strictly speaking, when such a national bank merged with another national bank it lost its corporate existence and all its assets went into the absorbing bank. That case is not in any sense covered by Section 5155 of the Revised Statutes. Therefore the right

to maintain such branches must be found, if at all, in Sections 5136 and 5190 of the Revised Statutes.

It is the acquiescence of the Attorneys General of the United States and of the Comptrollers of the Currency, in the existence of those branches in such large numbers since the year 1911 and in so many different cities and states that is a practical construction of the statute by departmental interpretation far outweighing any such interpretation expressed in the Attorney General's opinion of 1911.

It is a fair assumption from the conduct of the Department of Justice that the opinion of that department with respect to the powers of national banks has changed since 1911.

It is the settled rule of this court that the practical interpretation of an ambiguous or uncertain statute by an executive department charged with its administration is entitled to the highest respect, and if acted upon for a number of years, will not be disturbed, except for very cogent reasons. *Logan* v. *Davis*, 233 U. S. 613, 627. *Kern River Co.* v. *U. S.*, 257 U. S. 147, 154. *National Lead Co.* v. *U. S.*, 252 U. S. 140, 145.

In *Corsicana National Bank* v. *Johnson*, 251 U. S. 68, 82, (1919), it was held by this Court that contingent liabilities incurred by one person as surety or as an endorser for money borrowed by another are not "liabilities * * * for money borrowed" in the sense of Revised Statutes of the United States Section 5200. In arriving at this conclusion, this Court, by Mr. Justice Pitney, referred to the practical and administrative rules of the Comptroller of the Currency with respect to Section 5200 as a practical construction of the Statute. He said:

> "As to whether in Section 5200 the words 'the total liabilities * * * of any person * * * for money borrowed,' etc., require the liability of a surety or of an indorser for money borrowed by another to be added to his direct liability for money borrowed by himself in ascertaining whether the limit is exceeded — whatever view we might entertain were the matter *res nova*—we are advisd that by the practice and administrative rulings of the Comptroller of the Currency during a long period, if not from the beginning of national banking, liabilities which are incurred by one person avowedly and in fact as surety or as indorser for money borrowed by another are not included in the computation. We feel constrained to accept this as a practical construction of the section".

The practical and administrative rulings of the Comptroller of the Currency respecting the establishment and approval of branch offices of national banks justifies the application of the foregoing rule to the construction of Section 5190 of the United States Revised Statutes. When so applied, it demonstrates that the Comptroller of the Currency has been and is now acting within the laws of the United States in the establishment and approval of branch offices of national banks.

POINT IV

RECENT LEGISLATION OF CONGRESS RECOGNIZES THE RIGHT OF THE COMPTROLLER OF THE CURRENCY TO AUTHORIZE THE ESTABLISHMENT OF BRANCH OFFICES OF NATIONAL BANKS.

In the opinion of the Missouri Supreme Court (Record, printed page 12) it is stated that:

> "An unambiguous statute, such as the National Bank Act, does not require the adventitious aid of

subsequent kindred legislation to determine its meaning. Despite this fact where, as here, there is a general grant of power, however clear that grant may be, the enactment of subsequent legislation containing a specific kindred grant of power will afford at least persuasive support to the conclusion that the latter was not included within the former or the original grant. Such is the effect of the Act of Congress of March 3, 1865, now Section 5155, 3 U. S. Comp. Stats. p. 3467. This act provides that any bank or banking institution organized under a state law and having branches, may in conformity with existing law become a national bank and retain its branches. In the passage of this act it is evident that the legislative construction of the original is that it did not authorize the establishment of branch banks. Otherwise the subsequent section 5155 would not have been enacted. A recognition of the limitations of the National Bank Act is evident from the fact that the right of a national bank to have branches as provided in said section is limited to states the banking laws of which authorize the establishment of branches.

"The establishment by special acts of Congress of a branch bank at Chicago during the Columbia Exposition and at St. Louis during the Louisiana Purchase Exposition, affords further evidence of legislative construction of the National Bank Act, which excludes from its incidental powers the right to establish branch banks".

It is respectfully submitted that the Supreme Court of Missouri in laying down the above sweeping generalizations ignored a recent act of Congress which is controlling on the question of legislative intent and was misinformed as to the true purpose of the two acts regarding the Columbia Exposition and the St. Louis Exposition and misinterpreted the meaning of Section 5155 of the Revised Statutes of the United States.

We will take these points up in the order named.

The Act of Congress of April 26, 1922 (Public—No. 200—S. 3170—67th Congress—Part One—Stats. 1921-1922 p. 500, Chap. 147), is significant of a legislative recognition of the power of the Comptroller of the Currency to authorize, consent to and approve branch offices of National Banks and branch banks of District Banks in the District of Columbia. The statute reads as follows:

> *"An Act Regulating corporations doing a banking business in the District of Columbia.* Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no corporation that is not now engaged in the business of banking in the District of Columbia shall, after the passage of this Act, be permitted to enter upon said business in the said District, nor shall any corporation now or hereafter engaged in the business of banking be permitted to establish branch banks in said District, until after it shall have secured the approval and consent of the Comptroller of the Currency; and each one of the officers of such corporation so offending shall be punished by a fine not exceeding $1,000 or imprisonment not exceeding one year, or by both fine and imprisonment, in the discretion of the court. (Approved, April 26, 1922)."

The expression in the Act "nor shall any corporation now or hereafter engaged in the business of banking be permitted to establish branch banks in said district, until after it shall have secured the approval and consent of the Comptroller of the Currency" plainly indicates that Congress recognized the power of national banks to establish branches. If the right of national banks to establish branch offices was not recognized by Congress when it enacted the statute, it would have been a simple matter to confine the requirement as to approval *to the district banks* and to

eliminate national banks from the provisions of the statute. Instead, there was enacted the statute applicable to both classes of banks. That implied the existence of the right of both classes of banks to have such branches as are usual in the conduct of the banking business.

The Act of April 26, 1922 was a prohibition. It recognized the power of national banks to establish branch banks in the district. It merely provided that national banks should not establish such branch banks until after they should have secured "the approval and consent of the Comptroller of the Currency". The Act in its terms as well as in its spirit did not give the power to national banks to establish branch banks. It was based upon the assumption of that power in national banks to establish branches. But it limited the exercise of that power to cases where banks should have secured "the approval and consent of the Comptroller of the Currency."

The statute is applicable to national banks within the district. National banks within the district as well as national banks in the several States of the Union are both subject to the National Banking Act. They are all subject to the control of the Comptroller of the Currency. It would seem to follow, therefore, that by the enactment of this statute there was an express recognition of the right theretofore existing of the national banks in the District and elsewhere within the United States to create branches subject to the control and with the approval of the Comptroller of the Currency.

When this recent legislation is considered for the purpose of ascertaining the legislative intent and meaning of Section 5190, the opinion of the Attorney General and the decision of the Supreme Court of Missouri, both of

which relied upon the effect of prior legislation, lose much of the force of their reasoning.

Both the Attorney General in the opinion referred to and the Supreme Court of Missouri cited and relied upon the provisions of Section 5155 of the Revised Statutes providing for branches of state banks which was enacted March 3, 1865. That section reads as follows:

> "*Section 5155.* It shall be lawful for any bank or banking association organized under State laws, and having branches, the capital being joint and assigned to and used by the mother bank and branches in definite proportions, to become a national banking association in conformity with existing laws, and to retain and keep in operation its branches, or such one or more of them as it may elect to retain; the amount of the circulation redeemable at the mother bank, and each branch, to be regulated by the amount of capital assigned to and used by each".

This statute must have been in the legislative mind as well as Section 5190 at the time of the enactment of the Act of April 26, 1922. Therefore, by reason of the general provisions of the Act of April 26, 1922, both national and district banks were recognized as existing and having the right to establish branches with the consent and approval of the Comptroller of the Currency.

The Act of May 12, 1892 (27 Stat. 33) and the Act of March 3, 1901 (31 Stat. 1444) are also cited by the Supreme Court of Missouri in the case at bar as indicative of a contrary legislative intent, namely, that such special legislation was not necessary if Congress had not by the enactment of the same impliedly recognized the lack of power of national banks to create and maintain branch offices. The same argument is made in the opinion of the Attorney General of 1911 (29 Op. Atty. Gen. 81).

We think that the foregoing argument as to legislative intent based upon the Act of April 26, 1922, fully answers that argument.

We make a further distinction between the opinion of the Missouri Supreme Court and the opinion of Attorney General on the one hand and the correct meaning of the above legislation on the other hand. Those opinions were strongly influenced by the Act of Congress, Section 5155 of the Revised Statutes, heretofore quoted, which permits a state bank organized under state laws and having branches to become a national banking association and to retain said branches after nationalization. It is argued that there was no need of Section 5155, if national banks could have branches under existing law. But that argument must be considered in the light of the fact that state banks in 1865 were reluctant to nationalize their institutions. In order that any doubt on the subject might be settled and their reluctance to nationalize overcome, Section 5155 was enacted. It may well be argued that the reason of the enactment of the statute was that state banks might be assured of the same right to establish branches as then existed with respect to national banks under the National Banking Act of June 3, 1864. When this question was thus definitely settled, the reluctance of the state banks was overcome, and both state and national banks possessed the right to maintain their branches.

With state banks there was no limitation as to place, while with the national banks the limitation as to branches existed only as to the "place" wherein they maintained their main office. It is a matter which may be judicially noticed that at that time and at the present time state banks may have branches at different places in the State

and in some cases at the date of the enactment of the legislation in question state banks had branches in other states. National banking associations were then, as now, limited in their operations to the city, county, town or village, which is the "place" of their usual business. The opinion of the Attorney General, page 97, says:

> "If the power existed for a national bank to have branches, there was no necessity for the express provision allowing the state banks, when converted to retain their branches."

When it is remembered that the national banking laws restrict a national bank to the county and city, town or village, the place of its location named in its certificate, then it is seen that this statute was quite necessary in order that all doubt might be removed as to branches of state banks not only within the cities and towns, but existing throughout the states.

We think this disposes of the argument based on the provisions of Section 5155.

We will now consider briefly the arguments of the Attorney General and of the Supreme Court of Missouri based upon two other acts of Congress. The Attorney General in his opinion says:

"By act of May 12, 1892 (27 Stat. 33), any national bank in Chicago designated by the World's Columbian Exposition was, upon approval by the Comptroller, authorized to conduct a banking office upon the exposition grounds, the time within which such branch might be operated being restricted to two years; and a similar act was passed March 3, 1901 (31 Stat. 1444), with reference to the establishment *by the banks of St. Louis* of branches on the grounds of the Louisiana Purchase Exposition."

It is true that the first statute referred to provided that any national bank located in the City of Chicago might be designated by the World's Columbian Exposition to conduct a banking office upon the exposition grounds and upon such determination being approved by the Comptroller of the Currency the bank would be authorized to open and conduct such office as *a branch* of the bank. But we are unable to follow the argument of the Attorney General. It might well have been that, by reason of the control by Congress of the World's Columbian Exposition through a commission created by a statute which gave the commission certain powers but not the power to establish a bank on its grounds, it became necessary that such a power should be specifically granted by Congress. The Act may have had that origin.

As to the question of the Louisiana Purchase Exposition, the Act of Congress of March 3, 1901, provided that any bank or trust company located in the City of St. Louis *or the State of Missouri* could be designated by the Louisiana Purchase Exposition to conduct a banking office on its grounds. That act was necessary because it extended the powers to any bank *within the State of Missouri*. It does not appear whether the Louisiana Purchase Exposition was actually in the City of St. Louis or not. The opinion of the Attorney General falls into error in stating that the Act was passed in reference to the establishment by the banks *of St. Louis only*.

Conclusion

For the foregoing reasons as well as for the reasons stated by counsel for the plaintiff-in-error, it is respectfully submitted that the judgment of the State Court was erroneous and should be reversed.

Respectfully submitted,

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31 Nassau Street, New York
April 28, 1923